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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,145	04/23/2004	Patrick Gwen	976,031	7838
7590	11/25/2005		EXAMINER DOE, GRACE S C	
John S. Egbert Harrison & Egbert 7th Floor 412 Main Street Houston, TX 77002			ART UNIT	PAPER NUMBER
			3732	
DATE MAILED: 11/25/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/830,145

Applicant(s)

GWEN, PATRICK

Examiner

Grace SC Doe

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

### ***Specification***

2. The disclosure is objected to because of the following informalities: spelling mistakes (i.e. correct page 4, line 2 by replacing "portion" with "position"), missing words (i.e. correct abstract, line 5 so that "tool" follows cleaning), grammar mistakes (i.e. correct page 4, line 9 so that the sentence "It is still a further object of the present invention" includes a verb), incomplete sentences (i.e. clarify the thought on page 2 line 22 beginning with "It has been known that it is important..." ), and awkward phrasing (i.e. correct page 1, paragraph 2, line 1 to read as "A variety of implements can be used for cleaning the mouth."), (i.e. correct page 3, line 2 by inserting "Using these specially configured picks," before "food particles can be removed which would otherwise be inaccessible by the toothbrushes." and relocating it to the end of paragraph 5). Applicant is required to thoroughly proof read the application. Appropriate correction is required.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "14" and "18" have both been used to designate the first cleaning tool / toothbrush. The drawings are objected to as failing to comply with 37

CFR 1.84(p)(4) because reference character "64" has been used to designate both the lever member of the second and third cleaning tool. See page 11, paragraph 36 and figure 6. It seems that applicant intended to designate part 64 of page 11 and figure 6 as part 62. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

4. Claim 7 is objected to because of the following informalities: please insert the phrase "from the location where the toothbrush is pivotally attached to the case" following the "of said case" in line 2. Appropriate correction is required.
  
5. Claim 16 is objected to because of the following informalities: please insert the phrase "from the location where the toothbrush is pivotally attached to the case" following the "of said case" in line 7. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-6 and 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brown (US 5423427). Brown, part of the dental tool art, discloses a dental travel pack having a case (See figure 8, part 11; col. 3, lines 52) with a longitudinal axis (See figure 10, part 16), a pivotally mounted toothbrush (See figure 8 part 13; col. 3, lines 55-57; col. 4, lines 16, 40-46) having bristles extending transverse to the longitudinal axis of the case (See figure 10, part 13), a pivotally mounted second cleaning tool (See figure 8, part 14; col. 3, lines 55-57; col. 4, lines 21, 34-35), and a pivotally mounted third cleaning tool (See figure 8, part 15; col. 3, lines 55-57; col. 4, lines 23, 30-32). The toothbrush is adjacent an end of the case and pivotable about an axis transverse to the axis of the case (See figure 10, parts 13, 16, and 17). The case also includes a pivotally mounted closure member (See figure 8 part 12; col. 3, lines 51-55) that allows for the extension of the toothbrush while in the covering position (See

figure 9; col. 4, lines 40-46). The second cleaning tool is disclosed as a toothpick (See figure 8, part 14; col. 4, line 21). An axle extends across the case on which the toothbrush and second cleaning tool are pivotally mounted (See figure 10, part 17; col. 3, lines 58-64).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5423427), which is part of the dental tool art, in view of Seber (US 6170104), and further in view of Glessner (US 4776094). Brown, discussed above, fails to disclose lever members. Seber discloses a multi-functional hand tool including a first cleaning tool having a lever member extending outwardly of the case (See figure 2, part

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100a; col. 5, lines 16-24) that is angularly offset from the lever member of the second cleaning tool (See figure 2, part 100a, 100b, 100c; col. 5, lines 16-24) in order to enable efficient and convenient tool selection. Seber is considered to be part of the same analogous art as Brown because the disclosed lever member is reasonably pertinent to the particular problem with which the Applicant is concerned, facilitating tool selection. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Brown's dental pack with Seber's angularly offset levers in order to facilitate the user's selection and deployment a tool from a retracted to a fully extended position (See col. 5, lines 16-24). Brown in view of Seber, discussed above, fails to disclose a case abutment member that contacts the lever member. Glesser teaches a case abutment member (See figure 2 part 25; col. 3 lines 48-58; col. 4 lines 24-27) that contacts the lever member (See figure 1 parts 33 and 34; col. 4 lines 13-27) of the first cleaning tool in order to lock a tool in the open position. Glesser is considered part of the same analogous art as Brown because the disclosed abutment member is reasonably pertinent to the particular problem with which the Applicant is concerned, stabilizing a tool in the open position. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the dental tool of Brown in view of Seber with Glesser's abutment mechanism in order to lock a tool in the open position (See col. 2, lines 10-13).

11. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5423427), in view of Cabedo-Deslierres (US Pat. Pub. 2001/0054211), and

further in view of Sanders (US 3763869). Brown, discussed above, fails to specify that the third cleaning tool is an interdental brush. Cabedo-Deslierres, also part of the dental tool art, discloses a dental apparatus having a toothpick (See figure 12, part 30; col. 7, lines 38; col. 1, lines 24-28) and interdental brush (See figure 12, part 28; col. 7, line 37) in order to promote good dental practices and allow the user to achieve a triple clean effect (See col. 2, lines 56-59). Therefore, it would be obvious to one of ordinary skill in the art to modify Brown's multipurpose dental tool apparatus by replacing the flossing head with Cabedo-Deslierres' interdental brush in order to allow for thorough and effective interdental cleaning. Furthermore, the combination of a toothbrush, toothpick, and interdental brush in a single carrying case allows for convenient accessibility and encourages good oral hygiene (See col. 3, lines 19, 30-34). Brown in view of Cabedo-Deslierres fails to disclose that the toothpick and interdental brush are sized so as to be stored beneath the bristles of the toothbrush. Sanders, also part of the dental tool art, discloses in his drawings sizing objects so as to be conveniently stored beneath the toothbrush bristles in order to prevent damage to the toothbrush bristles (See figure 1, part 24). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the dental tool apparatus of Brown in view of Cabedo-Deslierres with Sanders' object sizing in order to prevent damage to the toothbrush. Furthermore, it would be obvious to one of ordinary skill in the art at the time of the invention to size the tools disclosed by Brown so as to fit beneath the toothbrush bristles because a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1995).



12. Claims 7-8, 12, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5423427), in view of Allen (US 5950265), and further in view of Sanders (US 3763869). Brown, discussed above, fails to disclose a case wherein the closure member is pivotally connected at an end opposite to the dental tools. Allen discloses a multi-purpose tool including a case (See figure 1 part 12; col. 3, lines 2-10) wherein tools are pivotally mounted at one end of the case (See figure 2, part 38; col. 3, lines 37-39). A closure member is pivotally mounted on the opposite end of the case from the cleaning tools (See figure 2 part 16; col. 3, lines 2-10). The first cleaning tool has an outwardly extending flap that abuts the closure member when the closure member is in the covering position (See figure 3 part 70; col. 3, lines 62-67, col. 4, lines 1-3, col. 4, lines 48-56). The first cleaning tool also discloses a notch, in which the closure member is received when the closure member is in a covering position (See figure 3 part 72; col. 3, lines 62-67, col. 4, lines 1-3, col. 4, lines 48-56). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Brown's pivotally mounted coaxial dental tools with Allen's case, closure member, and tool flaps in order to create a multi-purpose tool having improved mechanisms for locking tools in the open and closed position as well as providing housing capable of separating tools in use from those not in use (See col.1, lines 36-46). Brown in view of Allen fails to disclose that the toothpick and interdental brush are sized so as to be stored beneath the bristles of the toothbrush. Sanders, also part of the dental tool art, discloses in his drawings sizing objects so as to be conveniently stored

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beneath the toothbrush bristles in order to prevent damage to the toothbrush bristles (See figure 1, part 24). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the dental tool apparatus of Brown in view of Allen with Sanders' object sizing in order to protect the toothbrush bristles. In the alternative, it would be obvious to one of ordinary skill in the art at the time of the invention to size the tools disclosed by Brown so as to fit beneath the toothbrush bristles because a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1995).

### ***Double Patenting***

13. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

14. Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 4-11 and 13 of copending Application No. 10/647128. Although the conflicting claims are not identical, they are not patentably distinct from each other because as to claims 1-3, 9-11, 15, and 19, the copending application fails to claim a case having a longitudinal axis and a toothbrush with bristles transverse to the longitudinal axis of the case. Brown, discussed above, teaches a case with a longitudinal axis and toothbrush with bristles transverse to the said axis. Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to modify the copending application with Brown in order to make use of the known tool orientation to effectively conserve and utilize space within the carrying case. As to claims 4-6, the copending application fails to disclose that the toothbrush is located adjacent to an end of the case pivoted about an axis transverse to the axis of the case. Brown, discussed above, further teaches a toothbrush adjacent to an end of the case and mounted on an axis transverse to the case axis. Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to modify the copending application with Brown in order to effectively conserve and utilize space within the carrying case. As to claims 7-8, 12, 16, and 20, the copending application in view of Brown, discussed above, fails to disclose a closure member adjacent to an end of the case, opposite from where the cleaning tools are hinged, closure member having an axis transverse to the case axis, tools having an extending flap, closure member having a surface abutting the tool flap when in the covering position, and a notch located on the tool. Allen, discussed above, teaches a closure member adjacent an

opposite end of the case having an axis transverse to the case axis and a flap abutment member. Allen also teaches a tool flap and tool notch. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the copending application in view of Brown with Allen in order to securely lock the tools in the operable and inoperable positions (See col. 1, lines 35-41). As to claim 13, the copending application fails to disclose that the third cleaning tool is an interdental brush. Cabedo-Deslierres, discussed above, teaches that the third tool is an interdental brush. Therefore it would be been obvious to one of ordinary skill in the art at the time of the invention to modify the copending application in view of Cabedo-Deslierres as an obvious matter of choice to replace one dental tool for another in order to provide for thorough and effective interdental cleaning. As to claim 14 and 17-18, the copending application fails to disclose that the second and third cleaning tools fit beneath the bristles of the toothbrush. Sanders, discussed above, discloses that objects may be sized to fit beneath the bristles of a toothbrush. Therefore it would be obvious to one of ordinary skill in the art to modify the copending application in view of Sanders in order to prevent damage to the toothbrush bristles.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- A. U.S. Pat. No. 2247003 (Smith) discloses a case, pivotally mounted toothbrush, pivotally mounted closure member, and pivotally mounted toothpaste bottle sized to fit beneath the bristles of the toothbrush.
- B. U.S. Pat. No. 1304769 (Hendrickson) discloses a case, pivotally mounted toothbrush, pivotally mounted closure member, and toothpaste bottle sized to fit beneath the bristles of the toothbrush.
- C. U.S. Pat. No. 2168689 (Smith) discloses a case, pivotally mounted toothbrush, and pivotally mounted closure member.
- D. U.S. Pat. No. 1189852 (Melin) discloses a case, pivotally mounted toothbrush, pivotally mounted closure member, and illustrated compartment sized to fit beneath the bristles of the toothbrush.
- E. U.S. Pat. No. 1230279 (Coffey) discloses a case, pivotally mounted toothbrush, and pivotally mounted closure member.
- F. U.S. Pat. No. 2951489 (Roberts) discloses a case, pivotally mounted toothbrush, and compartment sized to fit beneath the bristles of the toothbrush.
- G. U.S. Pat. No. 2744278 (Roth) discloses a case and pivotally mounted toothbrush having a notch.
- H. U.S. Pat. No. 1546219 (Enzer) discloses a case, toothbrush, closure member, and toothpaste bottle sized to fit beneath the bristles of the toothbrush.
- I. U.S. Pat. Pub. No. 2002/0073496 (Kim) discloses a combination toothbrush and pivotally mounted bristled pick.

J. U.S. Pat. No. 5934295 (Gekhter) discloses a multipurpose dental tool that can accommodate a combination of various dental instruments including toothbrushes, picks, and interdental brushes.

K. U.S. Pat. No. 6247477 (Wagner) discloses a multipurpose dental tool that can accommodate a combination of various dental instruments including picks and interdental brushes.

L. U.S. Pat. Pub. No. 2004/0055619 (Ko) discloses a multipurpose dental tool having a pick and interdental brush.

M. U.S. Pat. No. 5,806,119 (Wood) discloses a case containing at least two pivotally mounted tools and a closure member that allows for the extension of one tool while covering the remaining tools within the case.

N. U.S. Pat. No. 6698049 (McLoudrey) discloses a case containing at least two pivotally mounted tools with angularly offset lever members.

O. U.S. Pat. No. 4,805,303 (Gibbs) discloses a case containing at least two pivotally mounted tools.

P. U.S. Pat. No. 6,282,996 (Berg) discloses a case containing at least two pivotally mounted tools.


Q. U.S. Pat. No. 6,389,625 B1 (Rivera) discloses a case containing at least two pivotally mounted tools.

R. U.S. Pat. No. 5,927,299 (Rappoport) discloses a case containing pivotally mounted toothpicks of various configurations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Grace SC Doe whose telephone number is (571) 272-2831. The examiner can normally be reached on Monday – Thursday from 8:00am - 6:30pm.

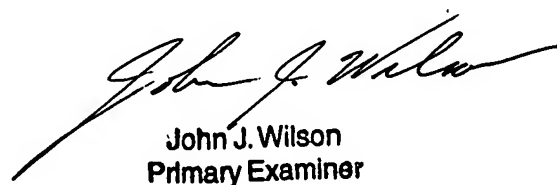
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Grace SC Doe  
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John J. Wilson  
Primary Examiner